



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

JRE  
Docket No: 4390-99  
8 December 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 2 December 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you underwent a medical examination on 12 March 1997 for the purpose of evaluating the dermatitis which had resulted in your placement on the Temporary Disability Retired List (TDRL). In the opinion of the physician who examined you on that date, although the condition was fairly well controlled, you remained unfit for duty because he felt the environmental conditions you would experience if assigned to a ship would likely exacerbate your condition. On 16 May 1997, the Physical Evaluation Board (PEB) made preliminary findings that you remained unfit for duty, that your condition was ratable at 10%, and that you should be discharged with entitlement to disability severance pay. You rejected those findings on 11 June 1997, and demanded a hearing. On 16 September 1997, however, you withdrew your demand, and accepted the aforementioned findings of the PEB. Final action was taken on your case on 2 October 1997 by the President, PEB, who directed the Chief of Naval Personnel to effect your discharge. On 8 October 1997, your counsel submitted your renewed request for a hearing. The request was denied by the President, PEB, on or about 8 October 1997, because it was untimely.

The Board concluded that your second request for a hearing was properly denied, as it was made after final action had been taken by the President, PEB. The fact that you underwent a periodic physical examination on 19 April 1999, due to apparent administrative error by the officials responsible for administering the TDRL, did not revive your right to a hearing, or have the effect of cancelling the final action taken in your case on 2 October 1997. In addition, the report indicates that your condition was essentially the same on 19 April 1999 as it was on 12 March 1997. You have not demonstrated that your condition met the criteria for a rating in excess of 10% on either date. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director